

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Daniel M. Schwartz,

Complainant,

vs.

Pacific Bell Telephone Company dba  
SBC California,

Defendant.

(ECP)  
Case 04-03-018  
(Filed March 15, 2004)

**ORDER DENYING RELIEF**

**Summary**

Daniel M. Schwartz (Complainant) seeks a refund of \$648.63 for toll charges billed by SBC California (SBC) to Complainant's Burlingame telephone. These charges were accumulated when his house guest dialed an Internet access number provided by an America On Line (AOL) customer service representative. Complainant requests that SBC be ordered to provide a "pop-up window" or equivalent notice to all California customers using Internet dial-up connections, warning them when they have connected to a number that is not a local (non-toll) call. Complainant's request for a refund is denied. SBC's toll charges here are lawful, and SBC is not currently required to provide such notice to its customers. This proceeding is closed.

**Procedural Summary**

A hearing was held on April 15, 2004, in San Francisco, under the Commission's expedited complaint procedure (Rule 13.2). This matter was submitted for decision on the same day.

**Position of the Parties**

Complainant argues that an accident happened, and the fault or cause lies with SBC not his house guest. Specifically, Complainant argues that there was no way for the house guest (from Hong Kong) to know he had been calling a local toll number until the bill arrived. Complainant suggests that for reasons of public policy and consumer protection, the Commission should order a full investigation of SBC's prior conduct under circumstances similar to those described in this complaint.

SBC submits that it is not required to provide a "pop-up" window to all California customers using dial-up telephone numbers to the Internet. SBC points out that the software to access dial-up telephone numbers to the Internet is provided by America OnLine, Inc. (AOL), the Internet Service Provider (ISP). The telephone company, which is SBC in this instance, simply provides the transmission line for the call. SBC's witness testified that SBC does not have the capability to provide the kind of notice requested by Complainant. According to the witness, such a pop-up window must come from the ISP. SBC notes that under SBC Tariff A.2.1.9, the responsibility for monitoring and paying for toll charges belongs to the customer, not SBC.

**Discussion**

We find no basis upon which to order the refund requested by Complainant. SBC has not been shown to be in violation of any Commission

decisions, orders or rulings. Therefore, the complaint against SBC should be dismissed.

However, the Commission is aware of similar problems experienced by customers using dial-up telephone numbers provided by ISPs. In Decision (D.) 04-07-052, issued on July 28, 2004, we approved two settlement agreements that promise to dramatically reduce unintended telephone toll charges for thousands of Californians who use the AOL dial-up service to connect to the Internet. The charges occur when subscribers' computers dial an AOL access number that is a toll call instead of a toll-free call. In the first settlement, between the Utility Consumers' Action Network (UCAN) and SBC, SBC agrees to notify consumers when charges exceed \$50 in dialing an AOL access number so that subscribers may correct the dial-up number. In the second settlement agreement, between UCAN and AOL, AOL intends to provide new subscribers with access numbers that are more likely to be toll-free numbers, according to the member's area code and first three digits of the dial-up location, thus reducing the risk that subscribers will select an access number outside of their local exchange area. In the first month of SBC's early warning program in April 2004, SBC notified 4,748 customers that their calls to an AOL access number exceeded \$50 and urged those customers to change the access number if they intended the calls to be toll-free. But this recent development does not change our finding in today's decision, and we deny Complainant's request for an investigation at this time.

**IT IS ORDERED** that:

1. The complaint against SBC California (SBC) is dismissed.
2. The amount of \$648.63 deposited with the Commission shall be disbursed to SBC.

3. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.